Terminix-International Co., L.P. d/b/a Rose-Terminix Exterminator Company and/or Rose Exterminator Company *and* Service Employees International Union, Local 14, AFL–CIO. Cases 32–CA–13581, 32–CA–13591, 32–CA–13598, 32–CA–13645, 32–CA–13835, and 32–CA–13860

January 13, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND COHEN

On September 8, 1994, Administrative Law Judge Jay R. Pollack issued the attached decision. The General Counsel and the Charging Party each filed exceptions and a supporting brief, and the Respondent filed answering briefs to the General Counsel's exceptions and the Charging Party's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Terminix-International Co., L.P. d/b/a Rose-Terminix Exterminator Company and/or Rose Exterminator Company, Concord, Oakland, San Francisco, and San Jose, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The General Counsel and the Charging Party have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

David J. Dolloff, Esq., for the General Counsel.
James S. Stock Jr., Esq. and *J. Gregory Grisham, Esq. (Weintraub, Robinson, Weintraub, Stock & Bennett)*, of Memphis, Tennessee, for the Respondent.
Paul Supton, Esq. (Van Bourg, Weinberg, Roger & Rosenfeld), of San Francisco, California, for the Union.
Dwight Scott, Esq., of Foster City, California, for Nelson Valdes.

DECISION

STATEMENT OF THE CASE

JAY R. POLLACK, Administrative Law Judge. I heard this case in trial at Oakland, California, on July 19–21, 1994. On November 18, 1993, Service Employees International Union, Local 14, AFL–CIO (the Union) filed the charge in Case 32–CA–13680 alleging that Terminix-International Co., L.P. d/b/a Rose-Terminix Exterminator Company and/or Rose Exterminator Company (Respondent) committed certain violations of Section 8(a)(5), (3), and (1) of the National Labor Relations Act (the Act). The charge was amended on April 18, 1994. The Union filed the charge in Case 32–CA–13581 on November 30, 1993. On December 1, the Union filed a charge in Case 32–CA–13591, which charge was amended on December 9. On December 6, the Union filed the charge in Case 32–CA–13598. Thereafter, on December 27, the Union filed the charge in Case 32–CA–13645. The charge in Case 32–CA–13835 was filed by the Union on April 1 and amended on April 18, 1994. Thereafter, on July 1, 1994, the Regional Director issued an amended consolidated complaint and notice of hearing against Respondent, in all six cases, alleging that Respondent violated Section 8(a)(5), (3), and (1) of the Act. Respondent filed a timely answer to the consolidated complaint, denying all wrongdoing.

All parties have been afforded full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. On the entire record, from my observation of the demeanor of the witnesses, and having considered the posthearing briefs of the parties, I make the following

FINDINGS OF FACT AND CONCLUSIONS

I. JURISDICTION

Respondent is a Tennessee limited partnership with offices and places of business located in Concord, Oakland, San Francisco, and San Jose, California, where it is engaged in providing pest control services to both retail and nonretail customers. During the 12 months prior to issuance of the complaint, Respondent, in the course and conduct of its business operations, derived gross revenues in excess of $500,00. During the same time period, Respondent purchased and received goods and products valued in excess of $5000 from sellers or suppliers located outside the State of California. Accordingly, Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Respondent admits and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background and Issues*

In 1990, the Union entered into a collective-bargaining agreement with Rose Exterminator Company covering the pest control technicians at Rose's San Mateo, San Jose, San Francisco, Oakland, Novato, and Concord locations in a multistore unit. In late 1991, Respondent purchased the Rose facilities. Respondent recognized the Union as the collective-bargaining representative of the former Rose employees and entered into a collective-bargaining agreement which was to expire on October 31, 1993. The Union and Respondent agreed that effective November 1, 1993, each location would be a separate bargaining unit. In August 1993, Respondent and the Union sent reopener letters to begin bargaining for the five separate bargaining units. The sixth location, Novato,

had closed prior to August 1993. The parties began bargaining in October 1993.

Within this factual framework, the General Counsel alleges that Respondent unlawfully: (1) withdrew recognition from the Union as exclusive bargaining representative at both the San Francisco and Concord locations; (2) promised employees increased wages and benefits and solicited employees to withdraw from the Union; and (3) disciplined an employee because of that employee's union and protected concerted activities.

Respondent admits that it withdrew recognition from the Union on November 17, 1993, at both the San Francisco and Concord locations. However, Respondent contends that it had a ''good faith doubt'' of the Union's majority status based on employee petitions, at each location, stating that the employees did not want to be represented by the Union. Respondent denies any wrongdoing and contends that it did not solicit any withdrawals from the Union. Finally, Respondent denies that the disciplinary warnings at issue were motivated by Union animus and asserts that such disciplinary actions were necessitated by legitimate business reasons.

B. *Facts*

1. The San Francisco branch

The complaint alleges that Respondent, acting through Arlie Canterbury, service manager at the San Francisco branch, promised employees additional income and improved benefits if they withdrew from the Union. The complaint further alleges that Canterbury encouraged Shop Steward Nelson Valdes to solicit the employees to withdraw from the Union. Furthermore, the General Counsel alleges that Ken Howie, manager of the San Francisco branch, promised Valdes additional income and more favorable benefits if he were to withdraw from the Union. Finally, the General Counsel asserts that Howie encouraged Valdes to solicit other employees to withdraw from the Union and provided Valdes with assistance in doing so.

The General Counsel called Nelson Valdes as a witness to prove the allegations against Canterbury and Howie. Valdes immediately established that he did not want to testify and that he wanted to disavow and rescind the testimony that he had given to the General Counsel during the investigation of the case. On January 27, 1994, during the investigation of the charge, Valdes gave a statement to the Union's attorney stating that Canterbury and Howie had initiated conversations with him about the Union and had persuaded him that he could earn $600 per month more if the employees were no longer represented by the Union. According to the statement, Canterbury told Valdes that he could receive a 401(k) plan and profit sharing if the employees were not represented by the Union. Howie told Valdes that a majority of the employees had to sign that they no longer wished to be represented by the Union. Howie gave Valdes a sample to follow for drafting an employee petition. It is undisputed that Valdes drafted and circulated employee petitions stating that the employees no longer wished to be represented by the Union. These petitions were used by the Respondent as the basis for withdrawing recognition of the Union on November 17, 1993. Thereafter, on March 4, 1994, Valdes gave an affidavit to a Board agent setting forth the same facts that were in his statement to the Union, but in more detail.

However, at the instant trial, Valdes testified that his statements to the Union's attorney and Board agent were incorrect. Valdes unconvincingly testified that he did not read either statement before signing it. He further testified that he did not make the assertions attributed to him in the statements. Paul Supton, the Union's attorney, testified that Valdes appeared at his office, unannounced, to complain about the compensation and benefits given to him after the withdrawal of recognition. Valdes told Supton how the employee petition had come about and agreed to give a statement. Supton had Valdes carefully read and sign each page. Supton told Valdes that he was going to submit the statement to the Board and a Board agent would probably contact Valdes in order to take an affidavit.

On March 4, Valdes went to the Board's San Francisco regional offices and met with Field Examiner Harvey Dasho. Dasho testified that he had the ''Supton statement'' with him and used it as an outline in questioning Valdes. According to Dasho, he explicitly told Valdes that the employee was not bound to the prior statement but rather was free to contradict or expand on the prior document. Dasho interviewed Valdes, typed an affidavit, and gave Valdes the opportunity to read it. Thereafter, Valdes initialed all changes on the affidavit and signed under the jurat.

I credit the testimony of Supton and Dasho over that of Valdes. I find Valdes' testimony inherently unbelievable. Valdes was too intelligent and articulate to sign a statement or affidavit without first reading it. On the other hand, Supton and Dasho both testified in a candid and straightforward manner. Further, the testimony given by Dasho and Supton seems much more probable. Based on Valdes' testimony before me and the inconsistencies in his sworn statements, I am convinced that Valdes circulated the petition because he believed he would obtain higher compensation and more benefits by withdrawing from the Union. Valdes later gave the statements to Supton and Dasho because he believed he would be better off financially if the Union was his bargaining representative. Sometime after giving the affidavit and before this trial, Valdes again decided that he would be better off without the Union. Thus, Valdes testified in accordance with his financial interests. Under these circumstances, I cannot credit any of Valdes' testimony. He unquestionably testified untruthfully about the giving of the two statements. As to the merits of this dispute, Valdes testified untruthfully in his pretrial statements and/or at the trial. It is unfortunate, by testifying so untruthfully, Valdes has made his testimony worthless and thus achieved his desire of having his pretrial statements disregarded. Except for the pretrial statements of Valdes, the General Counsel offered no evidence to support the allegations against Canterbury and Howie. See *New Life Bakery*, 301 NLRB 421, 429–430 (1991).

The only witnesses to testify regarding the employee petitions at the San Francisco facility were Canterbury and Howie. Both of these witnesses were more worthy of belief than Valdes. They both testified that Valdes approached them about the wages and benefits paid by Respondent to its unrepresented employees. In November, Valdes and two other employees approached Canterbury and Howie and asked about the benefits enjoyed by nonunion employees at Respondent's other branches. Valdes asked how the employees could withdraw from the Union. Howie informed the em-

ployees that they could ask the NLRB for an election or they could withdraw from the Union. Valdes asked what the statement withdrawing from the Union should say. Howie answered that the statement should name and identify the employees and declare that they no longer wished to be represented by Local 14. Howie stated that the petition had to be signed and dated. Valdes stated that he would draft a petition. On November 12, Valdes presented Howie with a petition stating that he no longer wished to be represented by the Union. Thereafter, Canterbury and Howie received such petitions from a majority of the employees.[1]

As previously stated, on November 17, Respondent withdrew recognition from the Union based on the petitions it received from Valdes and the other employees.

2. The Concord branch

On October 21, Robert Combs applied for a position as a pest control applicator at Respondent's Concord branch. On October 27, prior to being hired, Combs was asked by Branch Manager Dave Ghigliazza if he had ever been in a union. Combs answered that he preferred to work nonunion. According to Combs, Ghigliazza said that the Respondent needed signatures on a petition to vote the Union out. Ghigliazza said that Combs would have to be working in order to sign the petition. Combs answered that he needed the job and would sign it. Thereafter, on November 4, Combs received a letter stating that Respondent was not hiring at that time. However, on November 10, Combs received a call from Ghigliazza asking him to come in for another interview. On November 11, Ghigliazza told Combs that the employee had passed the aptitude test but had to take a drug test. Ghigliazza told Combs not to forget signing the petition to get the Union out.

On November 12, Combs began work and was asked that day to sign a petition seeking to withdraw recognition from the Union by employee Dean Lindeman. Combs signed the petition. On November 22, Combs voluntarily left his employment with Respondent. With Combs' signature, the petition contained the signatures of 6 of the 12 bargaining unit employees. As it did in San Francisco, Respondent withdrew recognition from the Union at the Concord facility by letter dated November 17, 1993.

On November 22, Combs returned early from his route and told Ghigliazza that he was going home to study the training program. Ghigliazza told Combs that he had to go out and finish his route before going home. Shortly thereafter, Combs told Ghigliazza that he was quitting.

Ghigliazza testified that he told Combs on October 27 that the Concord branch was a union shop and that the pay and benefits were pursuant to a union contract. He denied asking Combs about the Union or mentioning the employee petition. According to Ghigliazza, the rejection letter of November 4 was a mistake and that Combs was the leading candidate for the open position because Combs was the only candidate with a current pest control license. On November 11, Ghigliazza told Combs that Respondent might not be a union shop after all, because employees were circulating a petition to withdraw recognition from the Union. According to Ghigliazza, he told Combs of the petition in case that made a difference to Combs. I found Combs to be a more credible witness than Ghigliazza and I credit his testimony over Ghigliazza's denials.

3. The San Jose branch

In July 1993, employee Steve Swortwood spoke to San Jose Branch Manager Wayne Reynolds about an error in his paycheck. Swortwood was supposed to be paid an hourly rate of $8 plus a 10-percent night differential for a total of $8.80 per hour. However, Swortwood was only being paid at the rate of $8.50 per hour. Reynolds told Swortwood that he would look into the matter and get back to Swortwood. Swortwood testified that in late August or early September, Reynolds offered to increase Swortwood's hourly rate to $9.35 per hour if the employee dropped out of the Union and dropped the pay dispute. Reynolds pointed out that earlier in his employment Swortwood had been overpaid and that if Reynolds went through the records to determine Swortwood's proper pay, the employee might owe Respondent money. Swortwood said that he wanted his correct wages and that Reynolds should compute the proper amount. Reynolds called Swortwood ''an idiot for participating in that pinko fascist union'' and said he would calculate the proper payment. Reynolds warned Swortwood that a review of the records might show that Swortwood owed Respondent money. Swortwood was due a raise in November which would have raised his hourly rate to $8.50 plus an $.85-per-hour night differential.

Shortly thereafter, Reynolds calculated Swortwood's pay and told the employee that he owed Respondent $871 due to the overpayment of wages. Reynolds told Swortwood that he would not make Swortwood pay the Employer back if Swortwood remained ''quiet about it.'' Swortwood asked to think about it and Reynolds said, no, that it was a one time offer. Swortwood took issue with Reynolds' calculations and sought the Union's help in resolving the matter.

On November 18, Rick Zerbini, service manager at the San Jose branch, told Swortwood that he should sign a form stating that he no longer wished to be represented by the Union. Swortwood threw out the form. Zerbini said that he didn't want to be the only union branch left. Later when Swortwood went to receive his paycheck, Zerbini asked if he had filled out the form. Zerbini said the pay check would be ready after the form was filled out. Swortwood asked if Zerbini wanted him to work that day but Zerbini did not answer. Zerbini gave Swortwood his paycheck.

Shortly after December 17, Reynolds showed Swortwood that the dispute over the employees pay had been resolved with the Union. The result was that Swortwood owed the Respondent $31 instead of $871. The amount first arrived at by Reynolds had certain miscalculations and further the amount had decreased because Respondent had continued to underpay Swortwood during the controversy.

On December 7, Zerbini gave Swortwood two written warning notices prepared by Reynolds. Swortwood told Zerbini that the warnings were ''bullshit'' and refused to sign the warnings. Zerbini agreed that the warnings were without merit and said ''Wayne was pushing it.'' Swortwood

[1] Carlos Guadamos, an employee whom Canterbury and Howie testified was with Valdes when the withdrawal form was discussed, testified that he never attended such a meeting. I find Guadamos' testimony insufficient to establish that these events did not occur as testified to by Canterbury and Howie. Rather, I find merely that Guadamos was not present at the meeting.

went to get Reynolds and the conversation continued. Swortwood asked, ''what is the bone of contention?'' Swortwood told Reynolds that the events mentioned in the warning had occurred months ago. Reynolds answered that the problems had been going on for sometime. Reynolds blamed Swortwood for making him ''deal with that idiot from the Union.'' Reynolds said that while he was going through Swortwood's pay stubs he had plenty of time to think these things up. Swortwood said that he had a right to file grievances without retaliation. Reynolds answered that Swortwood had no union contract and no union protection. He further added that the employees no longer had union wages or union raises. Reynolds said that if Swortwood had three warnings he could be fired and the employee already had two. Reynolds said that if Swortwood had any further communications with the Union, he would get his third warning. Reynolds said that Respondent was ''not going to deal with that pinko, faggot, fascist, leftist group of fat cats that are sucking up our money and not doing a thing for us.'' Reynolds told Swortwood that the employees at the San Francisco and Concord branches had dropped out of the Union and received better wages and benefits. He said that these employees were happy that they had dropped out of the Union.

Zerbini testified that when Swortwood raised a question about the employee's pay he directed Swortwood to discuss the matter with Branch Manager Reynolds. According to Zerbini, Reynolds offered to give Swortwood the 6-month wage increase when it was due in lieu of going through all the pay records. Swortwood turned down the offer. Zerbini testified that although Reynolds had to do all this work the branch manager was not angry with Swortwood. Zerbini further testified that the Union was not mentioned. Zerbini denied ever talking to Swortwood about the Union. Zerbini testified that the union withdrawal form was distributed by a salesman, a nonunit employee. The form stated, ''I no longer wish to be represented by union local #14,'' and contained a place for employees to print their names, sign their names, and date the document. I can find no reason why a nonunit employee would be soliciting withdrawal from the Union. Respondent did not call the salesman as a witness. I find Zerbini's testimony on this point not to be credible.

Zerbini testified that when Swortwood argued about the two warning notices on December 7 he went and invited Reynolds to join the conversation. According to Zerbini, Reynolds explained the warnings but the Union was never mentioned. I found Swortwood to be a candid and straightforward witness. Swortwood was a more credible witness than Zerbini. Where their testimony is in conflict, I credit Swortwood's version over that of Zerbini.

Reynolds testified that Swortwood was warned because of excessive overtime and customer complaints. Reynolds was reluctant to admit that much of the overtime was due to the fact that sales personnel had sold jobs to be performed after the nominal end of Swortwood's shift. Further, regarding the alleged customer complaint that Swortwood smelled of alcohol, Reynolds was reluctant to admit that he knew Swortwood did not drink. Reynolds was unable to produce any records of the alleged customer complaints. Reynolds' testimony that the Union was never mentioned during the discussion of the warnings is not credited. First, I found Swortwood to be a more credible witness than Reynolds. Second, I found Reynolds to be less than candid in testifying as to the warnings given Swortwood. Third, Reynolds never testified regarding the union withdrawal form he had Zerbini distribute to employees. Based on demeanor and the probabilities, I credit Swortwood's testimony over the denials of Zerbini and Reynolds.

4. The Oakland branch

Paul Rodgers, shop steward at the Oakland branch, testified that he had numerous conversations, between September and December 1993, with Ralph Fleming, Oakland branch manager. According to Rodgers, Fleming stated that Respondent's nonunion employees received better benefits, a 401(k) plan, and the opportunity to earn more money based on production. Fleming stated that the health insurance would be more costly for employees but Respondent would make up that cost in wages or a stipend. He said that if the branch were to be nonunion, the employees would sign individual contracts setting forth a wage rate calculated on production. Fleming told Rodgers that employees earning less than $10 per hour would probably earn more under this system. He said that those employees earning $10 per hour would probably make the same amount. Fleming said that the employees at San Francisco and Concord had withdrawn from the Union and were receiving better benefits than employees at the Oakland branch. Fleming stressed to Rodgers that if the employees entered into another union agreement, the next time the incentive to drop the Union and sign individually might not be such a ''sweet deal.''

According to Rodgers, at employee meetings during October and November, Fleming told employees that if they withdrew from the Union they would receive better benefits and the opportunity to earn higher wages based on production. Many of the statements made privately to Rodgers were made to the employees at the end of these meetings. The main purpose of these meetings was safety and technology. The discussion of the Union usually took place at the end of the meetings when the discussions were opened for questions.

Finally, Rodgers testified that at the employee meetings Fleming told the employees that they would get a better deal from Respondent if they got out of the Union. Fleming said that the employees at San Francisco and Concord had received better benefits when they withdrew from the Union. He said these employees had signed individual contracts which were better than what Respondent's other employees received. Fleming also volunteered information as to how the employees could withdraw from the Union. However, Fleming told the employees that he didn't care whether they got out of the Union or not and that they ''had his blessing either way.''

Fleming testified that he never raised the Union with any employee. According to Fleming, employees asked about medical plans, the 401(k) plan, the stock option plan, and the pay plan at Respondent's nonunion branches. He testified that he merely answered their questions to the best of his ability. According to Fleming, Rodgers asked at one meeting how the employees could decertify the Union. Fleming answered that the employees could vote the Union out at an NLRB election or could individually withdraw from the Union. He directed them to find out how to do this from the Union. Based largely on demeanor, I found Rodgers to be a

more credible witness than Fleming and I base my findings on Rodgers' testimony.

Analysis and Conclusions

A. *The Alleged 8(a)(3) Violations*

In *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), the Board announced the following causation test in all cases alleging violations of Section 8(a)(3) or violations of Section 8(a)(1) turning on employer motivation. First, the General Counsel must make a prima facie showing sufficient to support the inference that protected conduct was a ''motivating factor'' in the employer's decision. Upon such a showing, the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct. The United States Supreme Court approved and adopted the Board's *Wright Line* test in *NLRB v. Transportation Management Corp*., 462 U.S. 393, 399–403 (1983).

The discipline of employees for filing or processing grievances, whether pursuant to a formal contractual grievance procedure or informally in the absence of such a procedure, is generally held to be a violation of Section 8(a)(1). *John Sexton & Co*., 217 NLRB 80 (1975); *Ernst Steel Corp*., 212 NLRB 78 (1974); and *Southwestern Bell Telephone Co*., 212 NLRB 43 (1974).

I find that the General Counsel has made a prima facie showing that Respondent was motivated by Swortwood's pursuit of the pay dispute and by the fact Swortwood sought the assistance of the Union. First, on resolving the pay dispute, Reynolds wrote two disciplinary warnings for Swortwood. These warnings covered drinking on the job, which Reynolds knew to be a stale and a unmeritorious complaint. The warnings also covered a customer complaint that Reynolds knew to be stale and based more on the customer's error rather than that of Swortwood. Reynolds also knew that the overtime problem was inherent in the night shift and was more attributable to the sales department than to Swortwood. Second, Zerbini admitted to Swortwood that Reynolds was angry about having to deal with the extra work and the Union because Swortwood insisted on an accounting of his hours. Zerbini admitted that the grievances lacked merit and that ''Wayne was pushing it.'' Third, when Reynolds was brought into the conversation, he admitted to Swortwood that he thought of this discipline while working on the accounting for Swortwood and the Union. Reynolds expressed union animus, denigrated the Union, and threatened Swortwood with discharge if the employee filed another grievance with the Union. The admissions and threat make it abundantly clear that Reynolds was retaliating against Swortwood for pursuing the pay dispute and bringing the union agent into the dispute.

The burden shifts to Respondent to establish that the same action would have taken place in the absence of the employee's protected conduct. Here, the General Counsel's strong prime facie case makes Respondent's burden substantial. See *Eddyleon Chocolate Co*., 301 NLRB 887 (1991). I find that Respondent has not met its burden. The credible evidence establishes that Respondent seized on old complaints about Swortwood that it knew were not completely valid to discipline the employee. Based on the credible evidence, I find that Zerbini and Reynolds admitted the pretextual and unlawful nature of these warnings to Swortwood at the time the warnings were given. Reynolds threatened that Swortwood would receive another warning, which would result in discharge, if Swortwood had any further communication with the Union. The threat caused Swortwood not to file a grievance over the warnings. In sum, I find that Respondent's reasons for the discipline are merely a pretext for retaliation against Swortwood because the employee brought the Union into his pay dispute with Reynolds. Accordingly, I find that Respondent disciplined Swortwood because of his union and protected concerted activities. I, therefore, find that Respondent violated Section 8(a)(3) and (1) of the Act.

Branch Manager Ghigliazza interrogated Robert Combs, an applicant for employment, about his union sympathies and about his willingness to sign an ''antiunion'' petition. Since the questioning of Combs took place in the context of an employment interview, antiunion statements, and in an apparent attempt to obtain a signature on the antiunion petition, I find that the interrogation of Combs interfered with his Section 7 rights in violation of Section 8(a)(1) of the Act. See *Rossmore House*, 269 NLRB 1176 (1984), enfd. sub nom. *Hotel & Restaurant Employees Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985); *Sunnyvale Medical Clinic*, 277 NLRB 1217 (1985); and *Camvac International, Inc*., 288 NLRB 816, 819 (1988). Most important, Ghigliazza told Combs that the applicant would be hired only if he agreed to sign an antiunion petition. The situation is a ''yellow dog contract''—an employment condition outlawed by Congress 62 years ago with the Norris-La Guardia Act, 47 Stat. 70 (1932). *Adco Electric*, 307 NLRB 1113, 1117 (1992), enfd. 6 F.3d 1110 (5th Cir. 1993). By placing such a condition on Combs' employment Respondent also violated Section 8(a)(3) and (1) of the Act.

B. *Withdrawal of Recognition*

The existence of a prior contract, lawful on its face, is sufficient to raise a dual presumption of majority, first that the Union had majority status when the contract was executed and second that a majority continued at least through the life of the contract. Following the expiration of the contract, the presumption continues, and the burden of rebutting it rests, of course, on the party who would do so. *Pioneer Inn*, 228 NLRB 1263 (1977). The presumption may be rebutted if the Employer affirmatively establishes either (1) that at the time of the refusal the Union in fact no longer enjoyed majority representative status; or (2) that the Employer's refusal was predicated on a good-faith and reasonably grounded doubt of the union's continued majority status. The good-faith doubt must be based on objective considerations and must not have been advanced for the purpose of gaining time in which to undermine the Union. The assertion of a good-faith doubt must be raised in a context free of unfair labor practices. *Terrell Machine Co*., 173 NLRB 1480, 1480–1481 (1969), enfd. 427 F.2d 1088 (4th Cir. 1970); and *Pioneer Inn*, supra.

Applying these principles to the facts of the instant case, I find that Respondent had a good-faith doubt that the Union represented a majority of the employees at the San Francisco branch. Respondent based its withdrawal on having received petitions from a majority of the unit employees stating that they no longer wished to be represented by the Union. *Bil-Mar Foods, Inc*., 286 NLRB 786 (1987). See also *W. R.*

Case & Sons Cutlery Co., 307 NLRB 1457 (1992); and *General Clay Products Corp*., 306 NLRB 1046 (1992). Contrary to the arguments of the General Counsel, there is no credible evidence that Respondent engaged in unfair labor practices or otherwise unlawfully solicited the withdrawals from the Union. The credited testimony of Howie and Canterbury establishes that the supervisors truthfully answered questions about the nonunion facilities and decertification. The employees asked how they could decertify the Union. Howie answered that the employees could file with the NLRB for an election or could individually withdraw. Neither Howie nor Canterbury made any promise of benefits to the employees. It is clear that, under Section 8(c) of the Act, an employer may lawfully furnish accurate information, especially in response to employees' questions, if it does so without making threats or promises of benefits. *Lee Lumber & Building Material*, 306 NLRB 408 (1992); *Eagle Comtronics*, 263 NLRB 515 (1982). In this case, I find that Howie and Canterbury lawfully answered the employees questions and made no threats or promises. Accordingly, I find no unlawful encouragement of the withdrawal petitions. Accordingly, I find that Respondent could lawfully withdraw recognition of the Union at the San Francisco branch.

However, I reach a contrary result with respect to the Concord branch. As found above, Ghigliazza unlawfully told Combs that the employee had to sign the antiunion petition in order to obtain employment. Thus, I find that Combs' signature on the decertification petition was unlawfully coerced by Ghigliazza. Without Combs' signature, the petition has only 5 employees out of a bargaining unit of 12 employees. The petition showing that 5 out of 12 employees no longer wish to be represented by the Union does not amount to objective considerations of a reasonable doubt of majority status. As can be clearly seen, the question of representative status was not raised in a context free from unfair labor practices. The question of majority status was raised after Respondent had unlawfully coerced Combs into signing the antiunion petition. Accordingly, I find that Respondent unlawfully withdrew recognition of the Union at the Concord branch. *Hearst Corp*., 281 NLRB 764 (1986); *Chesapeake Plywood*, 294 NLRB 201 (1989), enfd. 917 F.2d 22 (4th Cir. 1990).

C. *Threats and Promises of Benefits*

As found above, Reynolds unlawfully threatened Swortwood with discharge if the employee communicated with the Union. Reynolds further threatened Swortwood by telling Swortwood that he thought of the discipline while reviewing the payroll records involved in the payroll dispute. Reynolds also violated the Act by stating that Swortwood no longer had union protection and was not going to get his union raise. *Goodman Investment Co*., 292 NLRB 340 (1989). I further find that Zerbini unlawfully solicited Swortwood to withdraw from the Union and unlawfully threatened to withhold Swortwood's paycheck unless the employee signed a withdrawal form. *Fabric Warehouse*, 294 NLRB 189 (1989).

As shown above Fleming told Rodgers and the Oakland branch employees that they would receive higher wages and better benefits if they withdrew from the Union and signed individual contracts with Respondent. He told Rodgers that if the employees did not withdraw they would not get such a good deal the next time. I find that Respondent violated Section 8(a)(1) through Fleming by promising employees better benefits if they withdrew from the Union and threatening that such benefits would not be available in the future, if the employees did not now withdraw from the Union. *Marshalltown Trowel Co*., 293 NLRB 693, 697 (1989); *Central Washington Hospital*, 279 NLRB 60, 63–64 (1986).

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By withdrawing recognition from the Union as the exclusive collective-bargaining agent of its Concord, California branch pest control technicians, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1).
4. By dispensing two written warnings to employee Steve Swortwood in order to discourage union activities and/or protected concerted activities, and conditioning employment on the signing of an antiunion petition, Respondent violated Section 8(a)(3) and (1) of the Act.
5. Respondent violated Section 8(a)(1) of the Act by interrogating employees about their union sympathies, threatening loss of employment, loss of benefits and other reprisals, and promising benefits in order to discourage union activities.
6. The aboveunfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.
7. Except as found above, Respondent has not violated the Act as alleged in the complaint.

REMEDY

Having found Respondent engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and take certain affirmative action to effectuate the purposes and policies of the Act.

Respondent shall be required to remove any and all references to the December 7, 1993 warnings given to Swortwood from its files and notify Swortwood in writing that this has been done and that the warnings will not be the basis for any adverse action against him in the future. *Sterling Sugars*, 261 NLRB 472 (1982).

Respondent shall also be ordered to transmit the fringe benefit trust fund contributions on behalf of the Concord unit employees to the appropriate trust funds, with any interest or other sums applicable to the payments to be computed in accordance with *Merryweather Optical Co*., 240 NLRB 1213 (1979). I shall also recommend that Respondent make the unit employees whole for any losses they may have suffered as a result of its failure to make the contractually required fringe benefit trust fund contributions, *Kraft Plumbing & Heating*, 252 NLRB 891 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), and with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The General Counsel seeks a broad order applying to all five locations that were party to the 1990–1993 agreement.

I do not find such an order appropriate. Generally, the Board orders a notice to be posted at the location where the unfair labor practices took place. See, e.g., *NLRB v. S. E. Nichols, Inc*., 862 F.2d 952 (1st. Cir. 1988). Here, the agreement between the parties to change the multilocation unit to five separate units was made long before any unfair labor practices. Second, there is no evidence of the transfer or interchange of employees between the branches. Third, there is no evidence that Respondent is a repeat offender or has engaged in such egregious conduct as to warrant a broad order under *Hickmott Foods*, 242 NLRB 1357 (1979). Without evidence of any violation at the San Francisco or San Mateo branches, I find it inappropriate to order the posting of a notice at those locations. Rather, I limit the order to the three locations at which I have found unfair labor practices.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[2]

ORDER

The Respondent, Terminix-International Co., L.P. d/b/a Rose-Terminix Exterminator Company and/or Rose Exterminator Company, Concord, Oakland, San Francisco, and San Jose, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing recognition from and refusing to bargain collectively with Service Employees International Union, Local 14, AFL–CIO as the exclusive representative of its pest control technicians in Concord, California.

(b) Dispensing written warnings to employees in order to discourage union or protected concerted activities.

(c) Requiring an employee to sign an antiunion petition as a condition of employment.

(d) Interrogating employees about their union sympathies, threatening employees with loss of employment, loss of benefits or other reprisals, and promising benefits in order to discourage union activities.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of guaranteed under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain collectively with the Union as the exclusive representative of all pest control technicians in the Concord branch, with regard to rates of pay, hours of employment, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its offices and at all facilities in Concord, Oakland, and San Jose, California, copies of the attached notice marked ''Appendix.''[3] Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Remove from its files any and all references to the December 7, 1993 warnings given to Steve Swortwood and notify him in writing that this has been done and that these two written warnings will not be used against him in any future personnel actions.

(d) Transmit all fringe benefit trust fund contributions which have been unlawfully withheld, with interest, pursuant to the collective-bargaining agreement and make whole the employees in the Concord unit for any losses directly attributable to the withholding of those contributions, plus interest.

(e) Make whole the employees in the Concord unit for any losses directly attributable to the withholding of fringe benefit trust fund contributions, with interest.

(f) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain in good faith with Service Employees International Union, Local 14, AFL–CIO as the exclusive representative of all pest control technicians in our Concord branch.

WE WILL NOT dispense written warnings to employees in order to discourage union or protected concerted activities.

WE WILL NOT require any employee to sign an antiunion petition as a condition of employment.

WE WILL NOT interrogate employees about their union sympathies, threaten employees with loss of employment, loss of benefits or other reprisals, or promise benefits in order to discourage union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of rights guaranteed under Section 7 of the Act.

WE WILL recognize and, on request, bargain collectively with the Union as the exclusive representative of all pest control technicians in the Concord branch with regard to rates of pay, hours of employment, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

[2] All motions inconsistent with this recommended Order are denied. If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

WE WILL transmit all fringe benefit trust fund contributions which have been unlawfully withheld, with interest pursuant to the collective-bargaining agreement and make whole the employees in the Concord branch for any losses directly attributable to the withholding of those contributions, plus interest.

WE WILL make whole the employees in the Concord branch for any losses directly attributable to our withholding of fringe benefit trust fund contributions, with interest.

WE WILL remove from our files any and all references to the December 7, 1993 warnings given to Steve Swortwood and notify Swortwood in writing that this has been done and that these two written warnings will not be used against him in any future personnel actions.

TERMINIX-INTERNATIONAL CO., L.P. D/B/A ROSE-TERMINIX EXTERMINATOR COMPANY AND/OR ROSE EXTERMINATOR COMPANY